

LATHAM & WATKINS LLP
Daniel M. Wall (Bar No. 102580)
dan.wall@lw.com
Ashley M. Bauer (Bar No. 231626)
ashley.bauer@lw.com
Colleen E. Heyler (Bar No. 313036)
colleen.heyler@lw.com
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: +1.415.391.0600
Facsimile: +1.415.395.8095

Attorneys for Defendant Abraham S. Farag

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH J. GIRAUDO, RAYMOND A.
GRINSELL, KEVIN B. CULLINANE,
JAMES F. APPENRODT, and
ABRAHAM S. FARAG,

Defendants.

CASE NO. CR 14-00534 CRB

**DEFENDANT ABRAHAM FARAG'S
SENTENCING MEMORANDUM**

Hon. Charles R. Breyer
Courtroom 6, 17th Floor
Date: April 26, 2018
Time: 1:30 pm

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

TABLE OF CONTENTS

		Page
1		
2		
3	I. SUMMARY OF ARGUMENT	1
4	II. BACKGROUND	3
5	A. Mr. Farag Overcame a Difficult Childhood to Attend MIT and	
6	Stanford and Design Products at Apple.	3
7	B. Mr. Farag Is a Devoted Husband, Father, Friend, and Member of	
8	the Local Community.	4
9	C. Mr. Farag Turned to Real Estate Investing Because It Allowed	
10	Him to Spend More Time with His Family.	8
11	D. Mr. Farag’s Interactions with the Big Five.	10
12	E. Mr. Farag Deeply Regrets His Participation in the Conspiracy and	
13	Has Devoted Himself to Charitable Efforts and Raising His	
14	Children.	12
15	III. THE SENTENCING FACTORS WARRANT A SENTENCE WELL	
16	BELOW THE ADVISORY GUIDELINES RANGE.	15
17	A. Mr. Farag’s Participation in the Conspiracy Was a Serious Lapse	
18	in Judgment in an Otherwise Exemplary Life.	16
19	B. Similarly Situated Defendants Have Been Sentenced to Probation.	18
20	C. A Sentence of Probation, a \$20,000 Fine, and \$7,000 Restitution Is	
21	Sufficient But Not Greater than Necessary.	21
22	IV. MR. FARAG PROVIDED SUBSTANTIAL ASSISTANCE TO THE	
23	GOVERNMENT.	24
24	V. CONCLUSION.	26
25		
26		
27		
28		

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Gall v. U.S.</i> , 552 U.S. 38 (2007).....	24
<i>Nelson v. United States</i> , 555 U.S. 350 (2009).....	15
<i>U.S. v. Knights</i> , 534 U.S. 112 (2001).....	24
<i>United States v. Adelson</i> , 441 F. Supp. 2d 506 (S.D.N.Y. 2006).....	17
<i>United States v. Beamon</i> , 373 F. Supp. 2d 878 (E.D. Wis. 2005).....	17
<i>United States v. Booker</i> , 543 U.S. 220 (2005).....	15
<i>United States v. Brian McKinzie</i> , No. 4:11-cr-00424-PJH, ECF No. 100 (Sept. 27, 2017).....	21
<i>United States v. Carty</i> , 520 F.3d 984 (9th Cir. 2008) (en banc)	15
<i>United States v. Cooper</i> , 394 F.3d 172 (3d Cir. 2005).....	17
<i>United States v. Cox</i> , 271 F. Supp. 3d 1085 (S.D. Iowa 2017)	22
<i>United States v. Gernot Sebastian Zepernick</i> , No. 4:14-cr-00512-PJH, ECF No. 33 (Aug. 7, 2017).....	20
<i>United States v. John Michael Galloway</i> , No. 4:14-cr-00607-PJH, ECF No. 277 (Mar. 8, 2017).....	21, 25
<i>United States v. Joseph Giraudo, et al.</i> , Case No. 3:14-cr-0534-CRB, ECF No. 102 (Mar. 7, 2016)	1, 10
<i>United States v. Lehmann</i> , 513 F.3d 805 (8th Cir. 2008)	22
<i>United States v. Leslie Gee</i> , No. 4:14-cr-00003-PJH, ECF No. 40 (Aug. 9, 2017).....	21

1 *United States v. Nicholas Diaz,*
2 No. 4:15-cr-00607-PJH, ECF No. 272 (Mar. 1, 2017)21

3 *United States v. Ramin Rad “Ray” Yeganeh,*
4 No. 4:15-cr-00339-PJH, ECF No. 101 (Mar. 1, 2017)21

5 *United States v. Rudolph Silva,*
6 No. 4:14-cr-00002-PJH, ECF No. 46 (Aug. 7, 2017)20

7 *United States v. Stephan Florida,*
8 No. 4:14-cr-00582-PJH, ECF No. 408 (Jan. 4, 2017).....21, 26

9 **STATUTES**

10 18 U.S.C. § 3553(a)2, 15, 16

11 U.S.S.G. Ch. 5, Pt. A15

12 U.S.S.G. § 2R1.1, cmt. 5 &.....21

13 U.S.S.G. § 3B1.124

14 U.S.S.G. § 5B1.121

15 U.S.S.G. § 5E1.1(a)15

16 U.S.S.G. § 5K1.1 *passim*

17

18

19

20

21

22

23

24

25

26

27

28

I. SUMMARY OF ARGUMENT

Abraham Farag is familiar to this Court because he is the sole person who was indicted and participated in the suppression and taint hearings, yet was not an integral member of the “Big Five”, the core group of men who organized and facilitated the bid-rigging scheme at San Mateo trustee auctions. To the contrary, during those hearings FBI Special Agent Roan Wynar testified that Abraham was someone who came to auctions to buy property, was confronted by members of the Big Five (as was their practice with new and unfamiliar bidders) and in Special Agent Wynar’s words was engulfed by the existing “corruption.” *See* Tr. of Feb. 29, 2016 Hr’g at 186:7-14, *United States v. Joseph Giraudo, et al.*, Case No. 3:14-cr-0534-CRB, ECF No. 102 (Mar. 7, 2016) (“Feb. 26, 2016 Hr’g Tr.”) (the Big Five would “reach out to people who would come to the auction, and some number of those people would end up becoming corrupted or become part of the illegal behavior”).

Abraham stands before the Court because he failed to cope with that corruption properly. In retrospect, he should have avoided the auctions or, better yet, called the authorities. Instead, he tried to limit his involvement with the Big Five while continuing to buy properties. Abraham succeeded to a degree, as is evident in the modest list of properties underlying the Government’s volume of commerce calculations. *See* Ex. 25 (table showing Government’s properties list for Abraham). But the fact is that Abraham, like many others, did not escape the corruption. Abraham accepts full responsibility for his actions, and more generally his role in the San Mateo County bid-rigging scheme.

Nevertheless, Abraham Farag is a good man who has otherwise lived an exemplary and commendable life. His mistakes in coping with the conditions at the San Mateo County trustee auctions do not define him.

The nineteen letters submitted to the Court on behalf of, and in support of, Abraham describe an exemplary citizen. We choose those words carefully, notwithstanding the present circumstances, because the fact is that Abraham puts most of us to shame in terms of his dedication to his family, friends, and the communities around him. Abraham overcame a challenging upbringing—a transient childhood marred by physical abuse and conflict at home—

1 to become a dedicated husband, father, colleague, and community leader. He attended MIT and
 2 Stanford, then settled in the Palo Alto area to work as an engineer and start a family. He has
 3 three children and is an integral part of their daily lives; indeed, he is their primary caregiver.
 4 Abraham prioritizes family above all else, continuously providing financial and emotional
 5 support for his father, mother, step-mother, and brothers. But what sets him apart is his
 6 extraordinary dedication to the communities around him.

7 Abraham improves the lives of others. He has immersed himself in the greater Palo Alto
 8 community, serving on the board of his children's school, creating youth mentorship programs,
 9 and always being the person who will jump in to help with a community initiative without a
 10 second thought. He creates non-profit organizations that, drawing on his engineering skills,
 11 provide electricity to rural communities in underdeveloped countries. He created a solar-
 12 powered lamp that is given away to those in need and sold to others, all of the profits from which
 13 he donates to non-profit organizations. He created another non-profit for distributing technology
 14 that teaches children to play musical instruments. He provides housing for clean and sober living
 15 facilities in East Palo Alto—opening housing to the same individuals in need who are regularly
 16 referred by sentencing courts like this Court. These are the actions of a man who is warm,
 17 compassionate, and opens his heart and home to those in need. The letters before the Court
 18 describe an honest and hardworking man, one whose crime came as a shock to those who know
 19 him best. Those people still love Abraham, support him, and trust him because this crime does
 20 not represent the character of the man they have come to know.

21 The Court must now determine a fair sentence for Abraham—a punishment “sufficient,
 22 but not greater than necessary” to accomplish the goals of criminal punishment. 18 U.S.C. §
 23 3553(a). In Abraham's case, that sentence should consist of a fine and restitution in the amounts
 24 set forth below, and probation. The Government, per an inviolate Antitrust Division policy to
 25 always seek jail time for antitrust offenders, asks for Abraham to be incarcerated. Yet *none* of
 26 the other pleading defendants in the Bay Area-wide real estate bid-rigging cases who, like
 27 Abraham, have an offense level of 11 and a Section 5K1.1 reduction for substantial assistance to
 28 the Government, has been sentenced to prison. In fact, no one with the higher offense level of 13

1 and a Section 5K1.1 reduction has been sentenced to prison either. A sentence of a fine,
 2 restitution, and probation for Abraham is therefore justified simply to avoid disparate sentences
 3 between defendants.

4 But that's not the half of it. Everyone agrees that Abraham (and others, to be sure) faced
 5 an auction process that had been thoroughly controlled and corrupted by others. He was never
 6 an initiator or proponent of the unlawful behavior; he was, rather, compromised by it. That is
 7 serious, and Abraham makes no excuses. But justice in this case must include some measure of
 8 understanding that the conditions created by the Big Five could lead good people to make bad
 9 choices. Abraham is a very good person whose incarceration would serve no good purpose. A
 10 fine, restitution and probation will be more than sufficient.

11 **II. BACKGROUND**

12 **A. Mr. Farag Overcame a Difficult Childhood to Attend MIT and Stanford and** 13 **Design Products at Apple.**

14 Abraham Farag was born on September 9, 1972 in Columbia, Missouri. Presentence
 15 Report ("PSR") ¶ 44. His father worked as a chemist, and his mother was a homemaker. PSR
 16 ¶ 44. Abraham made the best of a difficult childhood. His father physically abused Abraham,
 17 his three brothers, and their mother, and Abraham ran away twice as a teenager to escape the
 18 abuse. PSR ¶ 46. The family moved over a dozen times before Abraham graduated high school,
 19 which made it difficult to make and maintain adolescent friendships. PSR ¶ 49; Ex. 1 [REDACTED]
 20 [REDACTED]. Nonetheless, Abraham's warmth, charisma, and optimism shined through,
 21 and he was voted most friendly in his senior class. *See* PSR ¶ 48.

22 In high school, Abraham was a member of the math team and physics club, PSR ¶ 47,
 23 and he decided he wanted to study engineering. Abraham attended MIT from 1990 to 1994,
 24 where he met lifelong friends and developed a passion for problem-solving through design. At
 25 MIT, Abraham was "a leader, someone you could turn to in times of need"; he was "always
 26 helping out with a positive attitude," including tutoring younger students and organizing trips for
 27 the dorm. Ex. 16 [REDACTED]. Even as a college student, Abraham "wanted to
 28 help the world," so he joined MIT's solar electric car team and took the cars around the world to

showcase what they could do. Ex. 9 [REDACTED]; Ex. 4 [REDACTED].

After college, Abraham spent two years working at General Motors, where his team built 3,000 electric vehicles. Ex. 9 [REDACTED]. He left General Motors to get his Master's in Product Design from Stanford and, upon graduation, began working at Apple. Abraham was part of a team that developed the Apple Pro mouse, "an intense project with a small team pushing the limits on what could be done in design, engineering, and the process of molding plastic." Ex. 2 [REDACTED]. Colleagues "found Abraham's approach to design refreshing and unique" and admired his "collaborative spirit," "warm and caring personality," and ability to foster the talents of others, "creating a safe and productive environment for ideas to be nurtured and thrive." *Id.*; Ex. 15 [REDACTED]. Apple was "a highly competitive, often brutal business" at the time, and while some employees "adopted a highly adversarial" attitude, Abraham brought "honest cooperation," "creative problem solving," and "professional respect" to his teams. Ex. 15 [REDACTED].

In 2005, after six years at Apple, Abraham founded his own firm, Sparkfactor Design. PSR ¶ 64. Abraham is passionate about industrial design, and many of his colleagues use products he developed. Ex. 5 [REDACTED]. Friends describe him as one of the brightest and most talented engineers they know, but also one of the kindest and most humble. Ex. 11 [REDACTED]. Abraham is motivated not by money but "by building and supporting community," "by fostering creativity," and "by gaining personal growth in himself and others." Ex. 13 [REDACTED]. "Abraham's roots are humble and unlike many successful entrepreneurs[,] he has chosen a modest lifestyle," focusing on "friends, family[,] and the community where he has been quick to offer support with his time, talent[,] and funding." Ex. 17 [REDACTED].

B. Mr. Farag Is a Devoted Husband, Father, Friend, and Member of the Local Community.

Abraham met Claudia Truesdell at Stanford while they were both studying engineering, and they married in 2001. Ex. 9 [REDACTED]. They live in Palo Alto with

1 their three children: Fiona (15), Otto (13), and Niles (11). The family enjoys riding bikes,
2 visiting parks and museums, camping, and exploring the coast.

3 Family is the most important thing in Abraham's life. "His connection to and care for
4 [his] kids is powerful and absolute." Ex. 9 [REDACTED]. As a family friend
5 of twenty years described, "The first thing that comes to my mind when I think of Abe is that
6 after dinner he plays games with his children instead of watching television. . . . [He] engages
7 with his children. He educates them. He is loving and caring. He is patient and encouraging.
8 He asks questions and listens to the answers." Ex. 11 [REDACTED]. This
9 sentiment is universal in the letters submitted on Abraham's behalf:

- 10 • "Watching his relationship with his kids is a joy, always helpful, engaged and playful.
11 I have watched him instruct them, never overly critical, always patient and loving
12 first, easy to be around; so different from how I have experienced many parents
interacting with their kids." Ex. 15 [REDACTED].
- 13 • "It is because of him that our tough athletic daughter [Fiona] gleefully takes on new
14 physical challenges. He will enthusiastically try out a new sport with her, most
15 recently rock climbing. . . . Our boys [Otto and Niles] crave complex logic games on
16 screen and off. . . . Abraham loves playing these games with them. Our kids start
17 their day with their dad who wakes before them to make their breakfast and pack their
school lunches. They end their day with their dad reading stories to them and tucking
18 them in . . . None of us can imagine our life without him." Ex. 9 [REDACTED].
- 19 • "He is a loving father who is deeply involved in the daily lives of his three children –
20 Fiona, Niles and Otto. I have seen over the years the supportive and critical role he
21 plays in their personal and school lives." Ex. 12 [REDACTED].
- 22 • "Abraham is an incredible father and husband. I'm always amazed at the quality of
23 his family relationships and the care he gives. [A recent dinner with the Farag
24 family] reinforced my previous observations of the love, encouragement, and
25 education he provides to his children and to those around him. Given his high degree
26 of involvement, it is difficult to imagine life in his family without his presence."
27 Ex. 4 [REDACTED].
- 28 • Abraham is "a family man first; he and his wife Claudia have 3 beautiful children that
he loves spending time with. They are both very involved with their children. I have
witnessed him reschedule a morning of meetings to go on one of his kids' field trips
on more than one occasion, or push out a meeting if they stop by the office to see
him. He takes the time to listen to their day with true interest, and it's evident that
they adore him." Ex. 3 [REDACTED].
- "I have known [Abraham's] partner Claudia just as long [as I have known Abraham],

1 and I cherish them both, and their wonderful, bright, happy kids I have seen grow
 2 from babies. They both take being parents seriously and put a lot of love into raising
 the kids.” Ex. 13 [REDACTED].

- 3 • “Abraham is a loving and patient father to his children aged 11, 13, and 15. He has
 4 provided them a stable upbringing, living in the same three mile radius for the last
 5 twenty years. . . . He takes great pride in helping his kids explore the world,”
 6 including trips to a cabin in the Oregon woods, as well as to Cuba and Tanzania to
 visit non-profits he supports. Ex. 1 [REDACTED].

7 In addition to providing emotional support for his children, Abraham has provided emotional
 8 support for his extended family. In particular, when Abraham’s brother Zane died in 2014 and
 9 when his mother died in 2016, Abraham was a source of comfort to his extended family. *See*
 10 PSR ¶¶ 44, 49; Ex. 1 [REDACTED]; Ex. 9 [REDACTED].

11 In addition to emotional support, Abraham “has always been the financial anchor to [his]
 12 family,” even before he was financially stable himself. Ex. 6 [REDACTED]; Ex. 7
 13 [REDACTED]. Indeed, the family has “to fight with [Abraham] not to give too
 14 much.” Ex. 7 [REDACTED]. Shortly after Abraham started college, his mother left
 15 his father due to physical abuse. PSR ¶ 46. Having never worked outside the home, Abraham’s
 16 mother had little chance of obtaining a well-paying job. PSR ¶ 49. For more than twenty years,
 17 beginning in 1994 when Abraham graduated from MIT and until her death from breast cancer in
 18 2016, Abraham sent his mother monthly checks, which were the majority of her income for the
 19 last decade of her life. Ex. 1 [REDACTED]; PSR ¶¶ 44, 49. Abraham purchased
 20 his mother a home in 2002 and, when he could afford it, a nicer home in 2006.

21 Abraham also supports his brother Aladdin (age 45), who [REDACTED]
 22 [REDACTED]. Ex. 1 [REDACTED]. Since
 23 2004, when Abraham learned that [REDACTED] Abraham has been sending
 24 Aladdin monthly checks and also bought him a new car. *Id.*; PSR ¶ 49. Aladdin does not know
 25 what he would do without Abraham’s support. Ex. 1 [REDACTED]. Abraham
 26 also supports his father despite enduring years of physical abuse. “The home environment for
 27 Abraham growing up was difficult. His treatment from [his father] was often bad and at times
 28 cruel, but since his adulthood Abraham has stepped in to help [his father and stepmother] without

1 a second thought.” Ex. 7 [REDACTED]. Abraham’s father developed early stage
 2 dementia and was forced into retirement in 2002 without enough savings to support his wife
 3 (Abraham’s stepmother) and two young sons (Abraham’s half-brothers). In 2004, Abraham
 4 began sending his father and stepmother monthly checks, which have constituted about half of
 5 their monthly cash flow for the past ten years. Abraham’s half-brother Omar (age 23) was not
 6 planning to apply to college because he thought his parents could not afford it, but Abraham
 7 encouraged Omar to apply and paid his tuition at the University of Illinois when Omar enrolled
 8 in 2013. Abraham’s half-brother Ameal (age 18) similarly was not planning to apply to college,
 9 but Abraham has convinced him to apply and told him he will cover the tuition. “It speaks to his
 10 character that Abraham has not only forgiven his father[,] but he has provided his father and
 11 [stepmother] a livelihood, and helped provide his young step[-]brothers access to a better
 12 childhood than he had.” Ex. 7 [REDACTED]. Abraham’s support extends to his
 13 wife’s family as well; when he learned that his father-in-law was having trouble paying bills,
 14 Abraham sent him money each month until he passed away in 2015. Ex. 9 [REDACTED]
 15 [REDACTED].

16 Abraham is also a loyal and generous friend, “giving freely of his time and talents to help
 17 those around him.” Ex. 2 [REDACTED]. When a college friend [REDACTED]
 18 [REDACTED], Abraham responded immediately by buying him a plane ticket
 19 to California. Ex. 16 [REDACTED]. The friend lived with Abraham on and off
 20 over the next two years, during which time Abraham helped him find work at Apple and
 21 encouraged him to apply to a graduate program at MIT. *Id.* The friend, who still visits the Farag
 22 family for a few weeks every year, explains, “I can honestly say that Abraham is one of the most
 23 generous, caring, and community minded people I know, and that [REDACTED]
 24 [REDACTED].” *Id.* Abraham has opened his home
 25 to relatives and others struggling to find their way, including taking on the adolescent son of a
 26 family friend, “[giving] him a meaningful job, coach[ing] and nurtur[ing] him, virtually
 27 adopt[ing] him, for years.” Ex. 15 [REDACTED]. Abraham also is generous with
 28 his design knowledge and business expertise, having provided career advice, acted as a sounding

board for ideas, offered to back friends' companies, rented space to friends, and let friends' employees stay in his home. Ex. 13 [REDACTED]; Ex. 8 [REDACTED].

Friends describe Abraham as "a naturally generous person" who embodies "enthusiasm, equality, creativity, and positivity." Ex. 15 [REDACTED]; Ex. 8 [REDACTED].

Abraham is a pillar of the Palo Alto community. He opened his home to more than sixty families in his daughter's kindergarten class, which was the start of family friendships that have lasted more than a decade. Ex. 10 [REDACTED]; Ex. 5 [REDACTED].

A fellow parent describes Abraham as a "central character organizing a variety of family-friendly activities outside of school," valued for his community spirit and positive influence. Ex. 5 [REDACTED]. On the various camping trips he organizes, Abraham "dive[s] into the middle of making group life successful; helping make and break camps, arranging kid's hikes, motivating campfire activities and generally setting the tone for health[y] lifestyles for all ages." *Id.* "[H]is outgoing friendliness and warmth [are] truly authentic." Ex. 10 [REDACTED]. Abraham also supports his children's schools financially, managing and funding the renovation of the Learning Center, where his children attended preschool, and hosting numerous fundraising events. PSR ¶ 51. Consistent with his love for community building and the outdoors, Abraham has worked tirelessly since 2010 to turn the closed Cemex plant and its 9,000 acres in Davenport, California "into a gathering place the local community and visitors from around the world could enjoy." Ex. 17 [REDACTED]. Due in large part to Abraham's work with—and funding for—local development planners, project managers, and environmental cleanup specialists, the Cemex land may be preserved, rehabilitated, and turned into a national park site. *Id.* "The [Cemex plant] effort was well beyond kicking the tires and an example of Abraham's commitment to the pursuit of a better world." *Id.*

C. Mr. Farag Turned to Real Estate Investing Because It Allowed Him to Spend More Time with His Family.

Abraham began investing in real estate around 2000. Ex. 20 (NDRE-FBI-I-002975) at -

1 2977. His job at Apple was stressful and required significant travel time away from his family.
2 *Id.* He began reading books on real estate investing and concluded that buying and leasing
3 property would allow him to support his family without the time and travel commitments of
4 working in the technology industry. Between 2000 and 2005, Abraham purchased
5 approximately one rental property per year on the multiple listing service (MLS). *Id.* In 2005,
6 Abraham formed Working Dirt LLC to provide asset and privacy protection, and he continued to
7 purchase rental properties on the MLS, primarily in the East Palo Alto neighborhood where he
8 lived. *See id.*

9 Abraham began attending trustee auctions in 2009 because he was a lender on a property
10 that was being sold. On a visit in mid-2009 to observe the bidding, he noticed two men who he
11 would later learn were two members of the Big Five: Dan Rosenbledt and Mo Rezaian. *Id.*
12 Abraham briefly interacted with Rosenbledt and Rezaian, asking them why no one bid on a
13 property that Abraham owned. *Id.* Rosenbledt explained that the property had cracks and
14 drainage problems and was near a bad neighborhood, which would make it difficult to sell. *Id.*

15 Abraham returned to the trustee auction in late summer or early fall of 2009, intending to
16 buy more properties as a business. *Id.* During this time, Rezaian and Defendant Joseph Giraudo
17 approached him and asked what he was doing at the auction and what kind of properties he was
18 interested in. Abraham explained that he was looking to buy properties in East Palo Alto to hold
19 as rentals, and that he had limited capital. In late 2009, Abraham purchased two properties at the
20 auction with a combination of his own money and money from friends. The Government does
21 not claim there was any unlawful conduct in connection with those purchases.

22 In early 2010, Abraham decided that purchasing properties at auction was a worthwhile
23 investment and decided to ask others to invest in Working Dirt. He shifted Working Dirt's
24 business model to bring in friends as investors, each of whom would have an ownership interest
25 in the company. Ex. 20 (NDRE-FBI-I-002975) at -2977. Investors would receive 70% of the
26 profits, and Working Dirt would take 30% as a management fee. *Id.* In early 2010, Abraham
27 received an initial investment of \$500,000. Throughout 2010, Abraham and his wife Claudia
28 owned approximately 24% of Working Dirt, while investors owned the remaining 76%. During

2010—the period in which Abraham was charged with conspiracy—Working Dirt’s 30% management fee did not cover the actual costs of managing the properties and Abraham personally did not profit from the business.

D. Mr. Farag’s Interactions with the Big Five.

When he began regularly attending the auctions in 2010, Abraham quickly learned that a core group of five persons (“the Big Five”) controlled the auctions: Giraudo, Rosenbledt, Rezaian, Kevin Cullinane, and Ray Grinsell. It seemed to Abraham that “the Big Five had enough capital to buy every property sold at the auctions,” and if someone did not play by their rules, the Big Five would bid up every property that person wanted to buy. Ex. 20 (NDRE-FBI-I-002975) at -2983. Giraudo was referred to as the “King,” and Rezaian “controlled and manipulated the auctions by intimidation, threats, and bribes.” Ex. 21 (NDRE-FBI-I-000241) at -241. The corruption Special Agent Wynar described in his testimony during the suppression hearing emanated from the Big Five. *See* Tr. of Feb. 11, 2016 Hr’g at 157:4-9, *United States v. Joseph Giraudo, et al.*, Case No. 3:14-cr-0534-CRB, ECF No. 94 (Feb. 24, 2016) (“Feb. 11, 2016 Hr’g Tr.”); Feb. 29, 2016 Hr’g Tr. at 186:7-14. Its members would approach individuals who qualified to bid and ask, “How much do you want to step aside?” Feb. 29, 2016 Hr’g Tr. at 187:7-12. According to an FBI 302 report, “Most people who were serious about buying and flipping property sold at trustee sales eventually agreed to participate in payoff agreements.” Ex. 24 (NDRE-FBI-I-002248) at -2252.

The Big Five largely left Abraham alone at first because they were not interested in the East Palo Alto properties that Abraham wanted to buy, and because Abraham was looking for properties to rent rather than flip. *See* Ex. 23 (NDRE-FBI-I-001804) at -1813. Even when Abraham purchased outside of East Palo Alto, the Big Five knew he had limited capital and did not see him as a threat. But the Big Five soon realized that “the prices in East Palo Alto were favorable,” *id.*, and that Abraham was seeking and obtaining more funding for the investment vehicle Working Dirt. So in early 2010 the Big Five began taking Abraham more seriously. They approached him again and said they should “partner” together. Abraham would not

disagree with those who have described similar approaches as “a form of extortion or collective agreement in which a payoff had to be made in order to purchase a property.”¹

Abraham understood and did not like what the Big Five were doing, but he nonetheless agreed to “partner” with them on certain properties. The Government does not contend, and Abraham would dispute, that all of his activities at the auction were affected by the corruption. For example, the list of properties the Government is using to calculate Abraham’s volume of commerce shows a six-month gap (between March and September 2010) in Abraham’s unlawful behavior. *See* Ex. 25 (table). Nevertheless, Abraham accepts that on a number of these occasions he crossed the line and made inappropriate agreements with the Big Five. *Id.*

That said, Abraham was always an outsider, playing by the Big Five’s rules in order to avoid being bid up out of spite. Abraham did not have agency to facilitate agreements on his own. In fact, on a number of occasions Abraham was simply told he owed someone money, whether for an illegal payoff or a legitimate joint venture buyout, even when he had no idea what deal had been struck or with whom, and even when he did not attend the auction at all. For example, prior to an auction, Abraham agreed to partner in a joint venture with Rezaian and Cullinane on a property at 1719 Sweetwood. Ex. 20 (NDRE-FBI-I-002975) at -2982. After Abraham bid for and won the property, Rezaian and Cullinane informed him that a different bidder whom he did not know named Victor Dong was also in the partnership, and that Abraham and Victor needed to pay out Rezaian and Cullinane for their percentages. *Id.* at -2982-83. That is how the Big Five worked.

Despite Abraham’s poor judgment in getting involved with the Big Five, his real estate business had a positive effect on the community. “[T]he work Abe did to improve so many properties [at a time of great turmoil] was hugely impactful.” Ex. 10 [REDACTED].

¹ *See* Ex. 22 (NDRE-FBI-I-001656) at -1661; *see also, e.g.*, Ex. 24 (NDRE-FBI-I-002248) at -2251-52 (“Giraudo made it clear . . . that in order for [people] to purchase property [at trustee sales] they would have to [participate in payoff agreements] to stop the bidding. . . . If they did not agree then Giraudo would bid up the property to a price where the property was no longer profitable.”); Ex. 21 (NDRE-FBI-I-000241) at -242-43 (“[I]f you did not work with Giraudo or Rezaian in that way, you would be black balled. . . . The Group said, ‘If you’re not in, we’ll just bid you up.’”).

Abraham “purchased many run-down, unlivable houses, fix[ed] them up, and sold them to hard working families who needed a nice affordable place to live.” *Id.* He worked with numerous tenants and prior homeowners to clean up their credit toward the goal of buying or buying back their homes. Ex. 3 [REDACTED]. Abraham designed a lease-to-own program and personally provided the financing that allowed some tenants to purchase their homes, often at below-market prices. *Id.*; Ex. 19 [REDACTED]. “Many of these tenants would not have thought home ownership possible without [Abraham’s] support and guidance.” Ex. 3 [REDACTED]. Abraham also donated properties to non-profits, helping them manage the properties until the non-profits were able to sell them and use the proceeds to further their missions. *Id.* Working Dirt’s employees find their work “extremely gratifying” due in large part to “Abraham’s goal to live a life of giving.” *Id.*; *see also* Ex. 19 [REDACTED]. They describe Abraham as “an individual of good will, benevolence, and human kindness,” Ex. 3 [REDACTED], who “takes pride in helping others and lovingly pushes those around him to be the best they can be and achieve their goals and dreams.” Ex. 19 [REDACTED].

E. Mr. Farag Deeply Regrets His Participation in the Conspiracy and Has Devoted Himself to Charitable Efforts and Raising His Children.

Abraham is extremely regretful of his participation in the conspiracy. PSR ¶ 24; *see, e.g.*, Ex. 12 [REDACTED]; Ex. 1 [REDACTED]; Ex. 4 [REDACTED]; Ex. 7 [REDACTED]. As a result of his mistakes, his children have dealt with the anxiety of losing their father and the embarrassment of being asked about his crime, employees of Sparkfactor and Working Dirt fear for their jobs, and his investors and business partners have suffered from his inability to refinance, obtain loans, and sign new tenants. Over the past seven years, Abraham has spent “hundreds of hours in self[-]reflection, and honest[,] searching conversations with friends, co-workers, and family.” Ex. 9 [REDACTED]. Abraham “knows that he made mistakes and took the wrong path,” *Id.*, and “[h]e now understands and deeply regrets the error of his business practices.” Ex. 12 [REDACTED].

1 Indeed, “[t]his case has transformed Abraham’s understanding of what matters in life and
 2 he is now determined to use his design and business skills to help others[.]” Ex. 12 [REDACTED]
 3 [REDACTED]. Abraham “has always been motivated to help people, form communities[,] and
 4 socially contribute,” Ex. 5 [REDACTED], but his “[o]ngoing soul[-]searching
 5 caused him to double down on his efforts to be a good person in the world,” Ex. 9 [REDACTED]
 6 [REDACTED]. Abraham now “feels like he owes it to the world to use his skills for
 7 betterment of the world.” Ex. 7 [REDACTED].

8 He is delivering on that commitment. In 2014, Abraham founded Makers4Good, a non-
 9 profit organization funded and run primarily by Abraham, which leverages industrial design to
 10 better the lives of those less fortunate. PSR ¶ 51; Ex. 5 [REDACTED]. With
 11 Makers4Good, Abraham applies his engineering skills “to greater societal issues[,] supporting
 12 communities he has never visited and people he will never meet,” and “inspir[ing] product
 13 designers to make consumer products with a community donation built into the business model.”
 14 Ex. 17 [REDACTED].

15 For example, Makers4Good recently completed the Helio, a portable solar power device
 16 designed for people who are not connected to a power grid. Ex. 2 [REDACTED];
 17 Ex. 5 [REDACTED]. The Helio provides light as well as a charge for electronics,
 18 allowing for greater communication and access to the digital world. Ex. 5 [REDACTED]
 19 [REDACTED]. Purchases of the Helio in developed countries (*e.g.*, for camping and emergencies)
 20 fund donations of the Helio in developing countries. *Id.* Proceeds from sales of the Helio have
 21 also allowed Makers4Good to donate funds to One Million Lights, a lighting project in Uganda;
 22 Lalafofofo, a solar light and power installation in Tanzania; and Global Brightlight Foundation,
 23 which is building household solar systems for an entire village in Guatemala. *Id.* Abraham
 24 conceived of the Helio, provided the funding to design and produce it, and encouraged a team of
 25 engineers to donate their time and talents to help those less fortunate. *Id.*

26 Another example of Makers4Good’s work is the Records4All project. Abraham’s team
 27 designed a low-cost recorder alternative so that children with hand disabilities (*e.g.*, missing
 28 fingers) could learn to play a musical instrument in school. Ex. 5 [REDACTED].

1 Before Makers4Good developed the recorder alternative, the only way for children with hand
 2 differences to participate in music class was a custom instrument costing thousands of dollars.
 3 *Id.* The alternative was expensive to engineer but is inexpensive to produce, and so far hundreds
 4 have been made and shipped to individual children and the organizations that advocate for them.
 5 *Id.* Abraham inspired a critical mass of technical talent to use their skills to serve a small
 6 community of kids that were otherwise being left out. *Id.*

7 In 2014, Abraham founded the Farag Family Foundation, which donates to programs that
 8 foster creativity, education, and healthy lifestyles. PSR ¶ 51. The Foundation has provided
 9 support to Friends for Youth, a children’s mentorship non-profit in Redwood City; the Riekes
 10 Center, a youth mentorship program in Menlo Park; and Startup Cuba, a group working to
 11 expand employment opportunities for Cubans. PSR ¶ 51. With a six-figure donation from
 12 Abraham, Santa Clara University purchased a mobile trailer, hired masters students to outfit it
 13 with 3D printers and laser-cutters, and currently travels to schools inspiring young minds with
 14 design thinking. Ex. 17 [REDACTED]. Abraham is “committed to working
 15 for good in the world” and spends the majority of his time on charitable endeavors. Ex. 12
 16 [REDACTED]; PSR ¶ 62. He plans to grow both Makers4Good and the Farag
 17 Family Foundation, including exploring potential partnerships between Makers4Good and the
 18 Sierra Club, the Red Cross, and World Vision.

19 Abraham also uses his real estate holdings and expertise to better the community. Since
 20 2010, Abraham has provided housing for five clean and sober living facilities in East Palo Alto,
 21 San Mateo, and Redwood City. PSR ¶ 51. These facilities house approximately thirty people at
 22 a time, all of whom are transitioning from addiction to a more stable life. Abraham helped two
 23 housing managers set up and operate their first clean and sober living facilities. As one manager
 24 describes, “Abraham was open to the idea when no one else was.” Ex. 14 [REDACTED]
 25 [REDACTED]. Many landlords had rejected the proposal to use their property for a clean and sober
 26 living facility, but Abraham “was very excited about the possibility to help those in the
 27 community.” Ex. 18 [REDACTED]. Abraham’s generosity has helped hundreds of
 28 people to recover from addiction and other illnesses. Ex. 14 [REDACTED]; Ex. 18

1 [REDACTED]

2 Abraham has also devoted himself to caring for his children. Abraham's wife Claudia

3 accepted a job at Google X, a division of Google whose mission is to invent and launch

4 "moonshot" technologies that could make the world a radically better place, such as designing

5 contact lenses that can monitor blood sugar. Ex. 9 [REDACTED]; Ex. 2 [REDACTED]

6 [REDACTED]. Claudia loves her work, but her workday begins at 7:00 am, requiring her to

7 retire to bed in the early evening and leave the house early in the morning. Ex. 9 [REDACTED]

8 [REDACTED]. Abraham decided to reduce his workload in order to care for their three

9 children. *Id.* Each day, Abraham wakes up with his children, makes breakfast and packs

10 lunches, addresses any daytime issues (transportation, field trips, illnesses, etc.), helps with

11 homework, and tucks them in at night. *Id.* "Abraham has welcomed these responsibilities with

12 heartfelt joy," and his children cannot imagine their lives without his daily presence. *Id.*

13 **III. THE SENTENCING FACTORS WARRANT A SENTENCE WELL BELOW THE**

14 **ADVISORY GUIDELINES RANGE.**

15 The Court has broad discretion in determining Abraham's sentence. Abraham's plea

16 agreement provides for an offense level of 11, carrying a potential sentence of 8-14 months in

17 prison and a fine of \$20,000 to \$50,000 under the Guidelines. Dkt. 277, ¶ 8; U.S.S.G. Ch. 5,

18 Pt. A. The plea agreement further provides for restitution in the amount of \$7,000 pursuant to

19 U.S.S.G. § 5E1.1(a). Dkt. 277, ¶¶ 8-9, 11. The Guidelines provide a useful starting point in

20 setting the sentence, but they are neither binding nor presumed reasonable. *United States v.*

21 *Booker*, 543 U.S. 220, 245 (2005); *Nelson v. United States*, 555 U.S. 350, 352 (2009). Rather,

22 the Court must make an individualized assessment of the appropriate sentence, based on the

23 particular facts of Abraham's case and the factors set forth in 18 U.S.C. § 3553(a). *See United*

24 *States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008) (en banc).

25 Under 18 U.S.C. § 3553(a), the Court must impose a sentence sufficient, but not greater

26 than necessary, considering: (1) the nature and circumstances of the offense and the history and

27 characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness

28 of the offense, afford adequate deterrence, protect the public, and provide the defendant with

1 necessary training or care; (3) the kinds of sentences available; (4) the kinds of sentences and the
 2 sentencing range established for the applicable category of offense in the Guidelines; (5) any
 3 pertinent policy statement in the Guidelines; (6) the need to avoid unwarranted sentence
 4 disparities; and (7) the need to provide restitution to victims of the offense. 18 U.S.C. § 3553(a).

5 These factors support a sentence of probation, a \$20,000 fine, and \$7,000 restitution. The
 6 PSR recommends a sentence of probation. PSR at 20.

7 **A. Mr. Farag's Participation in the Conspiracy Was a Serious Lapse in**
 8 **Judgment in an Otherwise Exemplary Life.**

9 Despite his tumultuous childhood, Abraham has led an exemplary life. His intelligence,
 10 humility, and caring nature allowed him to succeed at MIT, Stanford, Apple, and his
 11 entrepreneurial endeavors. Abraham's colleagues view him as "a supportive boss, mentor,
 12 father, and friend; giving freely of his time and talents to help those around him." Ex. 2 [REDACTED]
 13 [REDACTED]. He "represents many things to the many people in his life; he is an individual
 14 of good will, benevolence, and human kindness . . . a supportive colleague and employer that
 15 many turn to for guidance and advice[.]" Ex. 3 [REDACTED]. He is a devoted
 16 father to his three children, and has served as an emotional and "financial anchor" for his parents
 17 and brothers. Ex. 6 [REDACTED]; Ex. 1 [REDACTED]. His
 18 charitable contributions are genuinely exemplary. Whether opening his home to a friend in need
 19 or providing housing for recovering addicts when no one else would, each act demonstrates how
 20 much Abraham truly cares about improving the lives of those around him. See Ex. 15 [REDACTED]
 21 [REDACTED]; Ex. 16 [REDACTED]; Ex. 18. [REDACTED].

22 One such beneficiary of this kindness explained that "Abraham is one of the most generous,
 23 caring, and community minded people I know, and [] I might not be here today if it was not for
 24 his friendship, compassion, and encouragement." Ex. 16 [REDACTED].
 25 Abraham is not the type of person who needs a deterrent from committing another crime, as this
 26 offense is in no way indicative of the type of man Abraham is known to be.

27 Indeed, Abraham's friends and family are uniformly shocked that Abraham committed
 28 this crime. "The idea that Abraham would be involved in any wrong[-]doing is completely

inconsistent” with the honest person and positive influence they know and love. Ex. 2 [REDACTED]
 [REDACTED]. Abraham’s family was “shocked to hear about [his] indictment many years
 ago and have been there to support him the entire time.” Ex. 6 [REDACTED].
 Friends know Abraham as a man of high integrity and compassion and “can only ascribe this
 [crime] to a momentary lack of good judgment at the time.” Ex. 4 [REDACTED];
 Ex. 12 [REDACTED]. As a testament to his good character, friends continue to
 invest their money with Abraham and to seek his counsel regarding real estate transactions. A
 friend of over twenty years explains, “[Abraham] told me honestly, right away, about his
 criminal justice case; it saddened me because it seemed out of character with my experience of
 him. I had no reservations about continuing my business relations with his company and still
 trust their services. I certainly have no reservations about continuing our personal friendship. I
 trust his integrity.” Ex. 15 [REDACTED].

Abraham simply did not handle what the Big Five were doing the right way. Nor did
 others. That mistake has already cost Abraham dearly, as he is the only person not one of, or
 working for, the Big Five who has had to defend this case from indictment to the present. He
 deeply regrets his mistakes and has done all he can to make amends. As his wife writes:
 “[T]his 7-year experience of being investigated, indicted, and pleading guilty has greatly
 humbled Abraham. Ongoing soul searching caused him to double down on his efforts to be a
 good person in the world.” Ex. 9 [REDACTED]. He now “carries the feeling
 of an obligation to make up for this wrong that he was part of.” Ex. 7 [REDACTED].
 His many good works attest to that.

A downward departure from the Guidelines is appropriate for a defendant who, like
 Abraham, has dedicated so much of his life to bettering the lives of others. *See United States v.*
Adelson, 441 F. Supp. 2d 506, 513-14 (S.D.N.Y. 2006) (defendant’s good deeds weighed in
 favor of a lesser sentence); *United States v. Cooper*, 394 F.3d 172, 177 (3d Cir. 2005) (affirming
 sentence of three years’ probation with 6 months’ home confinement where Guidelines provided
 for 15-21 months in prison, due to defendant’s extraordinary charitable contributions); *United*
States v. Beamon, 373 F. Supp. 2d 878 (E.D. Wis. 2005) (downward departure from Sentencing

Guidelines based on defendant's community service and family circumstances was warranted, in light of his admirable service as a mentor to young men, his assistance to his ill father, and his positive influence on his younger family members).

B. Similarly Situated Defendants Have Been Sentenced to Probation.

Forty-one pleading defendants have been sentenced for bid-rigging at real estate foreclosure auctions in the East Bay. Of those, ten had an offense level of 11 in their plea agreement, like Abraham. *None* of the defendants at level 11 who received a Section 5K1.1 reduction have been sentenced to prison. *None* of the twenty-two defendants at level 13 have been sentenced to prison, and eight of the level-13 defendants received probation only (no home confinement). The following chart summarizes the sentences imposed on defendants who pled guilty and agreed to an offense level of 11 or 13:

Defendant	Case Number	Level	Sentence
Bradley Roemer	4:15-cr-00229-PJH	11	Probation; \$10,000 fine; \$2,809 restitution
Jorge Wong	4:11-cr-00428-PJH	11	Probation; \$20,000 fine
Thomas Franciose	4:11-cr-00426-PJH	11	Probation; \$20,000 fine; \$18,204 restitution
Irma Galvez	4:13-cr-00414-PJH	11	Probation w/ 6 mos. home confinement; \$3,000 fine
Eric Larsen	4:11-cr-00723-PJH	11	Probation w/ 6 mos. home confinement; \$4,000 fine
Gernot Sebastian Zepernick	4:14-cr-00512-PJH	11	Probation w/ 6 mos. home confinement; \$6,000 fine
Thomas Legault	4:11-cr-00429-PJH	11	Probation w/ 6 mos. home confinement; \$20,000 fine; \$2,411 restitution
Chuokey Bo	4:13-cr-00730-PJH	11	Probation w/ 6 mos. home confinement; \$20,000 fine; \$13,219 restitution

1	Leslie Gee	4:14-cr-00003-PJH	11	8 months in prison; \$7,500 fine; \$55,294 restitution <i>Did not receive 5K1.1 reduction</i>
2				
3	Ray Yeganeh	4:15-cr-00339-PJH	11	12 months in prison; \$149,733 restitution <i>Did not receive 5K1.1 reduction and had significant criminal history</i>
4				
5	Wesley Barta	4:13-cr-00413-PJH	13	Probation; \$7,500 fine
6				
7	Charles Rock	4:14-cr-00607-PJH	13	Probation; \$4,000 fine; \$12,084 restitution
8				
9	Danli Liu	4:12-cr-00611-PJH	13	Probation; \$5,000 fine; \$21,888.95 restitution
10				
11	Thomas Bishop	4:14-cr-00001-PJH	13	Probation; \$20,000 fine; \$11,079.60 restitution
12				
13	Stan Kahan	4:13-cr-00412-PJH	13	Probation; \$20,000 fine; \$12,746 restitution
14				
15	Timothy Powers	4:11-cr-00722-PJH	13	Probation; \$20,000 fine; \$31,068 restitution
16				
17	Joseph Vesce	4:13-cr-00415-PJH	13	Probation; \$21,365 fine; \$52,550 restitution
18				
19	Douglas Ditmer	4:12-cr-00448-PJH	13	Probation; \$20,000 fine; \$91,144 restitution
20				
21	Miguel De Sanz	4:14-cr-00581-PJH	13	Probation w/ 3 mos. home confinement; \$26,651 fine; \$111,771.32 restitution
22				
23	Grant Alvernaz	4:11-cr-00432-PJH	13	Probation w/ 3 mos. home confinement; \$63,272 fine; \$6,350 restitution
24				
25	Dominic Leung	4:12-cr-00083-PJH	13	Probation w/ 6 mos. home confinement; \$20,700 fine; \$45,428.50 restitution
26				
27				
28				

Keith Slipper	4:12-cr-00447-PJH	13	Probation w/ 6 mos. home confinement; \$20,000 fine \$58,669 restitution
Michael Renquist	4:13-cr-00143-PJH	13	Probation w/ 6 mos. home confinement; \$20,000 fine \$239,590.17 restitution
Garry Wan	4:14-cr-00604-PJH	13	Probation w/ 8 mos. home confinement; \$7,500 fine
Mark Roemer	4:15-cr-00228-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$2,809 restitution
Douglas Moore	4:11-cr-00431-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$9,540 restitution
Charles Gonzales	4:14-cr-00099-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$27,151 restitution
Hilton Wong	4:12-cr-00082-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$40,800 restitution
David Margen	4:11-cr-00425-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$63,114 restitution
Jaime Wong	4:11-cr-00427-PJH	13	Probation w/ 8 mos. home confinement; \$20,000 fine; \$102,429.64 restitution
John Shiells	4:14-cr-00581-PJH	13	Probation w/ 8 mos. home confinement; \$50,137 fine; \$275,389 restitution
Peter McDonough	4:13-cr-00144-PJH	13	Probation w/ 9 mos. home confinement; \$20,000 fine; \$53,300 restitution

To avoid unwarranted disparities in sentencing, Abraham also should receive a sentence of probation. Like the level-11 and level-13 offenders sentenced to probation, Abraham “do[es] not have a criminal history,” “accepted responsibility,” “showed a willingness to make restitution,” and “cooperated with the Government.” Transcript of July 26, 2017 Hearing at 15:4-14, *United States v. Rudolph Silva*, No. 4:14-cr-00002-PJH, ECF No. 46 (Aug. 7, 2017); *see also, e.g.*, Transcript of July 26, 2017 Hearing at 15:13-23, *United States v. Gernot Sebastian*

1 *Zepernick*, No. 4:14-cr-00512-PJH, ECF No. 33 (Aug. 7, 2017) (“[F]or those participants who
 2 not only accept responsibility for the wrongfulness of their conduct, who express a willingness to
 3 make restitution, if appropriate, . . . and who took the additional step of providing cooperation to
 4 the Government[,] [i]n these cases, I’m treating them like I would any other first offender cases,
 5 in which case I would generally impose a sentence of probation, if I were persuaded that the risk
 6 of recidivism was low or nonexistent[.]”).

7 The only pleading defendants who have been sentenced to prison in connection with the
 8 Bay Area real estate foreclosure cases fall into one of three categories: (1) they did not receive a
 9 Section 5K1.1 reduction (John Galloway, Leslie Gee); (2) they had a significant criminal history
 10 (Brian McKinzie); or (3) they did not receive a Section 5K1.1 reduction *and* they had a
 11 significant criminal history (Nicholas Diaz, Stephan Florida, Ray Yeganeh).² Abraham is in an
 12 entirely different category.

13 **C. A Sentence of Probation, a \$20,000 Fine, and \$7,000 Restitution Is Sufficient**
 14 **But Not Greater than Necessary.**

15 Despite the emphasis in the Guidelines on custodial sentences for certain antitrust
 16 offenders, *see* U.S.S.G. § 2R1.1, cmt. 5 & Background, probation is both permissible under the
 17 Guidelines (*see* U.S.S.G. § 5B1.1; PSR ¶¶ 71-73) and the most appropriate punishment in
 18 Abraham’s case.

21 ² *See* United States’ Sentencing Memorandum, *United States v. John Michael Galloway*, No.
 22 4:14-cr-00607-PJH, ECF No. 277 (Mar. 8, 2017) (no 5K1.1 motion); United States’ Sentencing
 23 Memorandum, *United States v. Leslie Gee*, No. 4:14-cr-00003-PJH, ECF No. 40 (Aug. 9, 2017)
 24 (no 5K1.1 motion); United States’ Sentencing Memorandum and Motion for Downward
 25 Departure Pursuant to U.S.S.G. § 5K1.1 at 2, *United States v. Brian McKinzie*, No. 4:11-cr-
 26 00424-PJH, ECF No. 100 (Sept. 27, 2017) (Probation Office calculated defendant’s criminal
 27 history as V based on alcohol-related convictions); United States’ Sentencing Memorandum,
 28 *United States v. Nicholas Diaz*, No. 4:14-cr-00607-PJH, ECF No. 272 (Mar. 1, 2017) (no 5K1.1
 motion; Probation Office calculated defendant’s criminal history as II based on alcohol-related
 convictions); United States’ Sentencing Memorandum, *United States v. Stephan Florida*, No.
 4:14-cr-00582-PJH, ECF No. 408 (Jan. 4, 2017) (no 5K1.1 motion; Probation Office calculated
 defendant’s criminal history as II based on drug-related convictions); United States’ Sentencing
 Memorandum, *United States v. Ramin Rad “Ray” Yeganeh*, No. 4:15-cr-00339-PJH, ECF No.
 101 (Mar. 1, 2017) (no 5K1.1 motion; Probation Office calculated defendant’s criminal history
 as II, including prior convictions for foreclosure-related fraud and contempt of court).

1 First, a custodial sentence would have a “devastating ripple effect” on Abraham’s family
 2 and the community. Ex. 19 [REDACTED]; see *United States v. Cox*, 271 F.
 3 Supp. 3d 1085, 1088-89 (S.D. Iowa 2017) (concluding that courts “cannot simply ignore the best
 4 interests of a defendant’s family and the defendant’s responsibilities to his or her family” when
 5 crafting a sentence sufficient but not greater than necessary to fit an offender’s crime). Abraham
 6 is the primary caregiver for his three children, Fiona, Otto, and Niles. Each day, he wakes them
 7 for school, makes their breakfast and packs their lunches, transports them to after-school
 8 activities, helps them with their homework, and tucks them in at night. Ex. 9 [REDACTED]
 9 [REDACTED]. This allows Abraham’s wife Claudia to work fulltime at a job she truly
 10 loves. *Id.*; PSR ¶ 52. If Abraham were sentenced to prison, “the punishment would fall heavily
 11 on his wife and children and it could irreparably harm his three children during a very significant
 12 developmental stage in their lives.” Ex. 12 [REDACTED]; see also *United States v.*
 13 *Lehmann*, 513 F.3d 805, 809 (8th Cir. 2008) (affirming sentence of probation for defendant after
 14 expert testified that a prison term would negatively impact the emotional development of the
 15 defendant’s young son). With Abraham in custody, his brother Aladdin, his father Shawky and
 16 stepmother Azza, and his half-brothers Omar and Amear could no longer rely on Abraham for
 17 the significant emotional and financial support he now provides. And, of course, countless
 18 individuals would suffer if Abraham were not able to continue his work engineering power
 19 sources for developing communities, designing instruments for children with hand disabilities,
 20 supporting youth mentorship programs and local schools, providing housing for clean and sober
 21 living facilities, and generally “making the world better for all of us.” Ex. 4 [REDACTED]
 22 [REDACTED]. Abraham “has many more positive contributions to make to society,” Ex. 16
 23 [REDACTED], and “[a]nything that prevents him from his ongoing work to the
 24 public benefit will harm [the] broader community.” Ex. 5 [REDACTED].

25 Second, this case already has severely impacted Abraham’s life. For nearly seven years,
 26 Abraham has suffered the shame of investigation and indictment, the emotional and financial
 27 stress of litigation, years of “speculation, judgment, [and] gossip,” and anxiety due to the
 28 possibility of being separated from his wife and children. Ex. 19 [REDACTED]

1 [REDACTED]; Ex. 6 [REDACTED]. In 2013, Abraham resigned from Sparkfactor
 2 because his involvement in the case caused the firm to lose current and potential clients. PSR
 3 ¶ 64; Ex. 5 [REDACTED]; Ex. 9 [REDACTED]. Without new
 4 business, Sparkfactor ran out of work, forcing Abraham to find other jobs for many of his
 5 engineers. Ex. 9 [REDACTED]. Abraham's real estate business suffered as
 6 well. Banks closed his accounts, title companies refused to work with him, tenants were
 7 reluctant to rent from him, and he could not refinance or obtain new loans. *Id.* In 2015,
 8 Abraham resigned from Working Dirt so that the business and its employees and investors would
 9 not continue to suffer as a result of his mistake. PSR ¶ 64.

10 Third, Abraham has no relevant criminal history and fully complied with the conditions
 11 of his pretrial release. Without question, Abraham is an asset to his community, not a danger.
 12 The Sentencing Commission recognizes that first-time offenders like Abraham pose the lowest
 13 risk of recidivism. U.S. Sentencing Comm'n, *Recidivism Among Federal Offenders: A*
 14 *Comprehensive Overview*, at 18 (2016), available at [http://www.ussc.gov/research/research-](http://www.ussc.gov/research/research-publications/recidivism-among-federal-offenders-comprehensive-overview)
 15 [publications/recidivism-among-federal-offenders-comprehensive-overview](http://www.ussc.gov/research/research-publications/recidivism-among-federal-offenders-comprehensive-overview). Indeed, the
 16 Commission is currently considering an amendment that would reduce the offense levels of first-
 17 time offenders and increase the availability of alternatives to incarceration for defendants at the
 18 lower levels of the sentencing table. U.S. Sentencing Comm'n, *Proposed Amendments to the*
 19 *Sentencing Guidelines*, at 20-37 (Aug. 25, 2017), available at [https://www.ussc.gov/sites/default/](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20170824_rf_proposed.pdf)
 20 [files/pdf/amendment-process/reader-friendly-amendments/20170824_rf_proposed.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20170824_rf_proposed.pdf); U.S.
 21 Sentencing Comm'n, Public Hearing on Proposed Amendments to the Federal Sentencing
 22 Guidelines (Mar. 14, 2018), available at [https://www.ussc.gov/policymaking/meetings-](https://www.ussc.gov/policymaking/meetings-hearings/public-hearing-march-14-2018)
 23 [hearings/public-hearing-march-14-2018](https://www.ussc.gov/policymaking/meetings-hearings/public-hearing-march-14-2018). A first-time, low-level offender like Abraham, who is
 24 the primary caregiver for three children, supports the local and global communities with his time
 25 and talent, and deeply regrets his limited participation in the bid-rigging conspiracy, is not
 26 someone who belongs in prison.

27 Finally, a felony record and a sentence of probation are significant punishment. Public
 28 comment to the proposed amendment for first-time offenders emphasizes the punitive effect

1 probation can have. “Probation is a severe punishment: it places substantial restrictions on a
 2 person’s liberty; may require home detention, community confinement, and community service;
 3 and places the person at risk of imprisonment for a minor technical violation.” Fed. Defender
 4 Sentencing Guidelines Comm., Reply Public Comment on Proposed 2017 Holdover
 5 Amendments at 6 (Nov. 6, 2017), *available at* [https://www.ussc.gov/sites/default/files/](https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20171010Reply/FPD.pdf)
 6 [pdf/amendment-process/public-comment/20171010Reply/FPD.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20171010Reply/FPD.pdf); *see also Gall v. U.S.*, 552
 7 U.S. 38, 48 (2007) (noting that offenders on probation are subject to several standard conditions
 8 that “substantially restrict their liberty”); *U.S. v. Knights*, 534 U.S. 112, 119 (2001) (“Inherent in
 9 the very nature of probation is that probationers do not enjoy the absolute liberty to which every
 10 citizen is entitled”) (internal quotations omitted). The felony conviction itself is also punitive,
 11 given the significant collateral consequences that result from a conviction. *Id.* A sentence of
 12 probation is appropriate for a first-time, low-level offender like Abraham and it will without
 13 question serve as a significant punishment.

14 **IV. MR. FARAG PROVIDED SUBSTANTIAL ASSISTANCE TO THE** 15 **GOVERNMENT.**

16 The Government plans to file a Section 5K1.1 motion in this case. The Guidelines
 17 provide that, upon a motion by the Government stating that the defendant has provided
 18 substantial assistance in an investigation or prosecution, the Court may depart from the
 19 Guidelines. U.S.S.G. § 5K1.1. To determine the appropriate departure, the Court may consider
 20 factors such as the significance and usefulness of the defendant’s assistance; the truthfulness,
 21 completeness, and reliability of the information provided; the nature and extent of the
 22 defendant’s assistance; and the timeliness of the defendant’s assistance. *Id.* § 5K1.1(a).

23 Abraham’s decision to plead guilty, and the information he subsequently provided to the
 24 Government, were significant. Shortly after Abraham decided to plead, the two remaining non-
 25 pleading defendants, Joe Giraudo and Kevin Cullinane, also decided to plead. Giraudo and
 26 Cullinane pled open, which means that their sentencing—including the application of
 27 adjustments such as the aggravating role adjustment under U.S.S.G. § 3B1.1—will be contested.
 28 *See* Dkts. 263, 265. During a lengthy interview on November 27, 2017, Abraham provided the

Government with information relevant to the sentencings of Giraudo and Cullinane, including:

- (1) the deal Giraudo struck in 2003 regarding a property on Garden Street, establishing Giraudo's long-term leadership role in bid-rigging at the San Mateo County auctions;
- (2) Giraudo's knowledge of the auctions, influence over other bidders, and access to capital;
- (3) Giraudo's supervision of Jim Appenrodt; (4) Giraudo's exercise of control and influence over Abraham, Mr. Appenrodt, and Mo Rezaian with respect to a property located at 3050 Edison;
- (5) Giraudo's habit of bidding up properties when he was mad at someone, making it too costly for that person to purchase the property even though Giraudo would not make money from it;
- (6) Cullinane's ability to be in on a deal even when he was not present at the auction; and
- (7) Abraham's reluctant agreement to buy Cullinane's share of the property at 1719 Sweetwood, for fear of jeopardizing future partnerships with the Big Five. *See generally* Ex. 20 (NDRE-FBI-I-002975). This information, which was provided in connection with a contested sentencing, constitutes substantial assistance under Section 5K1.1.

Although he was not among the first defendants to plead guilty, Abraham pled at the first reasonable opportunity. Prior to indictment, the Government insisted that Abraham plead to both bid-rigging and mail fraud. Abraham's counsel determined that the alleged conduct did not constitute mail fraud as a matter of law and refused to enter a plea to mail fraud, which carried a far longer potential sentence than bid-rigging. This determination was correct. Two years after indictment—and after Judge Hamilton granted a motion to dismiss the mail fraud charges in the East Bay cases—the Government finally dismissed the mail fraud charges against Abraham. Pretrial Order No. 1 at 1-11, *United States v. Galloway et al.*, No. 4:14-cr-00607-PJH, ECF No. 139 (Aug. 15, 2016) (dismissing mail fraud counts); Dkt. 178 (granting Government's motion to dismiss mail fraud counts and forfeiture allegations).

By that time, Abraham's counsel had learned that the charges against him were based in part on more than 200 hours of unauthorized electronic surveillance, collected when the FBI planted hidden microphones around the entrance to the San Mateo County Courthouse. *See* Dkt. 150 (order granting motion to suppress). Abraham argued that the entire case against him was tainted by this violation of the Fourth Amendment and Title III. *See* Dkts. 231, 232, 240.

1 When the Court rejected this argument, Abraham promptly pled guilty. Abraham should not be
 2 punished for fighting legally insufficient mail fraud charges and insisting that the Government
 3 establish its case was not tainted by Fourth Amendment and Title III violations that lasted for
 4 nine months. *See* Transcript of Jan. 11, 2017 Hearing at 19:21-24, *United States v. Stephan*
 5 *Florida*, No. 4:14-cr-00582-PJH, ECF No. 452 (Apr. 20, 2017) (“[There] should be no additional
 6 punishment because your client took the time to try to get out from under the mail fraud charges
 7 before actually entering into a plea.”).

8 **V. CONCLUSION**

9 For the foregoing reasons, Mr. Farag respectfully requests that the Court impose a
 10 sentence of probation, a \$20,000 fine, and \$7,000 restitution.

11
 12 DATED: April 19, 2018

Respectfully submitted,

13 By /s/ Daniel M. Wall

14 Daniel M. Wall (Bar No. 102580)
 15 Ashley M. Bauer (Bar No. 231626)
 16 Colleen E. Heyler (Bar No. 313036)
 17 LATHAM & WATKINS LLP
 18 505 Montgomery Street, Suite 2000
 19 San Francisco, CA 94111-6538
 Telephone: (415) 391-0600
 Fax: (415) 395-8095
 dan.wall@lw.com
 ashley.bauer@lw.com
 colleen.heyler@lw.com

Attorneys for Defendant Abraham S. Farag